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C O N F I D E N T I A L SECTION 01 OF 03 NAIROBI 000823

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FROM THE AMBASSADOR

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SUBJECT: Crisis in Coalition Government

REF: (A) Nairobi 744 (B) Nairobi 785

CLASSIFIED BY AMBASSADOR MICHAEL E. RANNEBERGER REASONS 1.4 (B,D)

11. (C) Summary: Although in mid-April meetings between President Kibaki, Prime Minister Odinga, and their teams held out prospects to resolve differences which had troubled the coalition, another serious crisis threatens its existence. The crisis developed at the end of last week when Prime Minister Raila Odinga objected to President Kibaki's appointment of Vice President Kalonzo Musyoka as leader of government business in the recently re-opened parliament. The situation was exacerbated when Musyoka submitted a list of members of Parliament to serve on the House Business Committee which sets parliament's agenda, nominating himself as Chair. Odinga feels that his position as equal partner in the Grand Coalition government entitles him to both positions. This is a winner-take-all type of fight because both positions are both highly symbolic and important. I met with Speaker of Parliament Marende on April 27, and he said that he will likely make a ruling that will not take the side of either party. He will likely constitute the parliamentary business committee, and let Parliament elect the head of the committee (possibly Marende himself), and will avoid the question of who is leader of government business. (The leader of government business does not need to be the head of the parliamentary business committee.) This will keep Parliament functioning while providing more time for the two sides to work out the issue of who will be leader of government business. I spoke to Kofi Annan on April 26, and he is weighing in with Kibaki and Odinga to urge them to work this out, and calling Marende to express support for this likely ruling. Marende asked me to request Annan to urge Kibaki and Odinga to respect whatever ruling Marende makes, and I am doing so. We will be poised, along with other members of the international community, to express support for the Speaker's likely ruling. Growing domestic pressure on Kibaki and Odinga to sort out their differences, coupled with encouragement from Annan, us, and others, will probably keep the coalition together. That said, the two sides have demonstrated a propensity to miscalculate, so the possibility of a walkout from Parliament by either side cannot be ruled out. It is also possible that, if the two sides do not pull back, the crisis could slide toward the holding of new elections or a unilateral (but still constitutionally legitimate) government involving only Kibaki, his Party of National Unity, and Vice President Musyoka (who has a party with only 14 Members of Parliament). Neither are viable options for stable democratic government, so we must continue to keep the coalition together while pressing for implementation of the reform agenda. End summary.

12. (C) Ref A reported on the troubled state of the coalition government and prospects for the reform process. Pressure on President Kibaki and Prime Minister Odinga from the U.S., Kofi Annan, and others in the international community coupled with growing domestic Kenyan pressure influenced the two leaders to try and sort out the coalition government issues. The Secretary's letter and the

earlier comments on Kenya by the President were crucial in influencing the coalition partners (ref B). Kibaki, Odinga, and their teams met in mid-April to work out a way forward. That meeting seemed to lay the basis for a more effective working relationship between the coalition partners. Kibaki and Odinga issued a joint statement emphasizing the need for unity in the coalition government and said all contentious issues were discussed. They indicated that the terms and modalities of a recently formed coalition management committee were agreed to. The statement further indicated that Kibaki and Odinga had instructed their teams to prepare for their consideration a draft document dealing with the contentious issues (everything from consultation regarding executive appointments, to the full range of the reform agenda). It was also agreed that each ministry would be tasked with providing a status report on their efforts to implement the reform agenda. Documents prepared for and as a result of the meeting which we obtained indicate that there was a frank discussion, including on the need to counter the "culture of impunity," and regarding the two sides' differing interpretations of the national accord which constituted the coalition government.

13. (C) Barely a week after this constructive meeting, the opening of Parliament on April 21 triggered a profound crisis which threatens to tear the coalition apart. The issues which triggered the crisis are who will become leader of government business in the Parliament, and who will chair the House Business Committee (HBC) which sets Parliament's agenda. Vice President Musyoka sent a letter to Speaker of Parliament Marende designating himself as leader of government business. While there is no legal requirement that both positions be held by the same person, the vice president has traditionally served as both chair of the HBC and leader of government business, although at one point ex-President Moi rotated it among government ministers. Odinga sent a counter letter to Marende designating himself as leader

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of government business. However, Musyoka's attempt to submit a slate of MPs for the House Business Committee without consultation, and which named him as Chair, further inflamed the situation. The HBC sets the Parliament's agenda and thus is an extremely important position. Odinga objected to this as an attempt by Musyoka to demean Odinga's position as equal partner in the Grand Coalition government. On April 23 there was a furious debate in Parliament over the question. Marende then adjourned Parliament until April 28, and said he would make a ruling on that day regarding the issue of how to constitute the HBC. (Note: Until the HBC is constituted, Parliament cannot conduct business. Thus important issues, such as discussion of a supplementary budget and forming the Independent Interim Electoral Commission can not move forward. End Note.)

14. (C) Since then there has been a flurry of private meetings and public statements, all of which make clear that both sides are dug into their positions. This has created a sense of crisis, since the fate of the coalition government itself is potentially at stake. Following meetings with his team on April 25, Kibaki sent a letter to Marende stating that it is his decision, per the constitution, to designate the leader of government business, that his decision is final, and that he will not engage in further consultations regarding the issue. On April 26 Odinga held a large rally in Kibera, a Nairobi slum which is a key base of his support, and stated that he will not back down. He stated that he will leave the coalition government and insist on new elections if the issue is not resolved in his favor. Leaders of Kibaki's side also publicly stated that they would not back down.

15. (C) Just as both sides are responsible for the troubled state of the coalition, both are responsible for setting up the current crisis. Kibaki and Musyoka did not consult Odinga and his side before they sent the letter designating Musyoka. Although the vice president has often been the leader of government business, nothing in the constitution or law states that he must be, and Musyoka was not a party to the national accord which established the coalition. He has played the role of spoiler, as we have previously reported. This serves the purposes of those on the President's side who seek to frustrate Odinga and limit his authority as Prime Minister. Although, as we have reported, Odinga has not played his hand particularly well within the coalition government, he has legitimate grievances that his authority as Prime Minister has not been

respected and that the coalition is not functioning based on consultation and power-sharing. Given this mounting frustration, Odinga has decided to make a decisive stand over the issue of who will become the leader of government business. As he is Kibaki's coalition partner (and Musyoka was not part of the agreement), and he has the mandate "to coordinate" government business in the newly created position of prime minister, he has a strong argument that he should be leader of government business in Parliament. Even though the mid-April meeting between Kibaki, Odinga, and their teams opened the way potentially to sort out the coalition government issues, Odinga feels that the issue of who will become leader of government business is so important that he cannot afford to ignore it. Moreover, in his view he has chosen a battleground which plays to his advantage: he has a parliamentary majority, the Speaker was elected by Odinga's party and so he is unlikely to rule against him, and by staking out this issue Odinga unifies his Orange Democratic Movement (ODM), which was increasingly fractured. Similarly, Kibaki's side believes they have the decisive advantage of holding the legal and constitutional high ground, given Kibaki's position as head of government.

16. (C) Apart from the political issues, there are a number of technical and legal issues involved. The National Accord, which Kibaki and Odinga signed, gives Odinga as Prime Minister responsibility to "coordinate and supervise the functions of government." Article 23 of the constitution states that "the executive authority of the Government of Kenya shall vest in the President and, subject to this Constitution (which now incorporates the position of Prime Minister), may be exercised by him either directly or through officers subordinate to him." Attorney General Wako, who is an ex-officio Member of Parliament and pro-Kibaki, may provide a legal interpretation that Kibaki as head of government is the only person authorized to name the leader of government business. The Speaker, however, is not required to make his ruling based on the Attorney General's opinion.

17. (C) Marende is on the hot seat. Since last year he has shown himself to be a man of principle who has run Parliament in an objective, non-partisan manner. Kibaki, Musyoka, and Odinga have set up the crisis as a winner-take-all outcome, so there is little room for compromise. Some are trying to persuade Musyoka to withdraw his name as leader of government business in order to end the crisis, but that seems unlikely. Some in the ODM see Odinga's move as designed

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to force compromise on other issues; i.e. he backs off this issue in return for Kibaki agreeing that Odinga can name a new commissioner of police, or new judicial hierarchy, but this seems unlikely. Odinga is taking a strong stand due both to the symbolic and actual importance of the position of leader of government business.

18. (C) I met with Speaker Marende April 27 to discuss the way forward. Marende said that, when the crisis developed at the end of last week, he sought meetings with Kibaki and Odinga to try to work out a compromise. Marende said that he would only meet with them together. Odinga was willing to attend a tripartite meeting and negotiate, but Kibaki refused. Marende said that, while he has not made a final decision regarding his ruling to be given on April 28, he will be guided by several considerations. First, the coalition government must speak with one voice; he will indicate that it has not done so. Second, his paramount consideration is to keep Parliament functioning given the urgent need to implement the reform agenda (as the Speaker declared in his opening address to Parliament, per septel). Third, he will strike a balance between the two sides in an effort to give them more time to work out a compromise. Marende pointed out that he can constitute the business committee while side-stepping the question of who is leader of government business, since the head of the committee need not be the leader of government business. It can be left to Parliament to choose the leader of the business committee (roughly equivalent to the House Rules Committee in the U.S. Congress). The Parliament could, he indicated, choose to elect him, because both sides respect him as impartial in running the Parliament and, per the Parliament's standing orders, he is ex-officio head of all committees anyway. I told Marende that this approach sounds reasonable. I said that we would support him publicly if he rules along these lines, coordinate

with key diplomatic colleagues to do the same, and publicly and privately urge both sides to respect it (and avoid a walkout by either side).

¶9. (C) I spoke with Kofi Annan on April 26 to review the state of play. Annan blamed both sides for provoking the crisis, although he commented that "ODM is not wrong to think that in some cases they have been short-changed with respect to the spirit and letter of the accord." Annan said that he would try to talk with Kibaki and Odinga, and I urged him to call Marende to help fortify the Speaker to make a courageous and difficult ruling along the lines laid out above. When I met Marende April 27, he asked me to request Annan to call Kibaki and Odinga to urge them, in general terms, to support and be prepared to cooperate with whatever ruling the Speaker makes, given that both sides know that he (the Speaker) has the interests of the nation at heart. I have conveyed this message to Annan. The most constructive approach we can adopt at this point is to support the Speaker's likely ruling, coordinate closely with Annan and the international community to express support for it, and weigh in with both sides to accept it. That approach will buy time and space for the two sides to negotiate further regarding the leader of government business. There is strong pressure coming from the Kenyan people for Kibaki and Odinga to work out their differences, and we will encourage and urge them to do so.

¶10. (C) Given that both sides have repeatedly demonstrated a propensity to miscalculate, a walkout from Parliament by either side cannot be ruled out. A walkout would paralyze business and heighten a sense of crisis. That would undoubtedly increase calls for a new election, which is not a viable option at this time given the lack of electoral machinery and the continuing high ethnic tensions. Ultimately, the parliamentarians do not want to risk their newly gained seats and suffer the expense of a new election. A new election thus seems unlikely, but again nothing should be ruled out